

# Order

Michigan Supreme Court  
Lansing, Michigan

March 18, 2009

Marilyn Kelly,  
Chief Justice

137688

Michael F. Cavanagh  
Elizabeth A. Weaver  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 137688  
COA: 278047  
Grand Traverse CC:  
03-009349-FH

ROBERT E. BAILEY,  
Defendant-Appellant.

---

On order of the Court, the application for leave to appeal the September 23, 2008 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we VACATE the Court of Appeals' double jeopardy analysis and REMAND this case to that court for reconsideration, under the five-factor test recognized by this Court in *People v Mezy*, 453 Mich 269, 285 (1996), of the defendant's argument that his two convictions of conspiracy to deliver less than 50 grams of cocaine violate double jeopardy principles. We note that *People v Manning*, 163 Mich App 641 (1987), which the Court of Appeals cited in its judgment, is no longer controlling to the extent it is inconsistent with *Mezy, supra*. In all other respects, the application for leave to appeal is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.

We do not retain jurisdiction.



s0311

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 18, 2009

*Corbin R. Davis*

Clerk